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# PROTECTION OF THE ENVIRONMENT IN TIMES OF ARMED CONFLICT

## Letter dated 28 September 1992 from the Permanent Missions of the Hashemite Kingdom of Jordan and of the United States of America addressed to the Chairman of the Sixth Committee

The delegations of the Hashemite Kingdom of Jordan and the United States of America request that the attached memorandum, prepared to aid in the consideration of agenda item 136, "Protection of the environment in times of armed conflict", be circulated as a document of the Sixth Committee under that item.

The document is being submitted by the delegations listed therein, and such delegations as may in the future be added.

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Annex

MEMORANDUM

International Law Providing Protection to the Environment in Times of Armed Conflict

To assist the members of the Sixth (Legal) Committee in considering agenda item 136, "Protection of the environment in times of armed conflict", the Governments of Jordan and the United States of America have identified the following provisions of existing law:

1. The following specific provisions of international law provide protection for the environment during armed conflict:

(a) The fundamental rule, set out in article 22 of the Regulations annexed to the Hague Convention [IV] of 1907 respecting the laws and customs of war on land, that the right of belligerents to adopt means of injuring the enemy is not unlimited;

(b) The rules governing the means of injuring the enemy reflected in article 23 of the Hague Regulations that prohibit the employment of poison and the destruction of the enemy's property unless such destruction be imperatively demanded by the necessities of war, and in article 28 of the Hague Regulations that prohibit pillage;

(c) The rule, set out in article 55 of the Hague Regulations, that the occupying State is only an administrator and usufructuary of the real estate of the occupied State and consequently is required to safeguard the capital of these properties and administer them in accordance with the rules of usufruct;

(d) The rule, set out in article 53 of the Geneva Convention of 1949 relative to the Protection of Civilian Persons in Time of War, that any desruction by the occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, is prohibited, except where such destruction is rendered absolutely necessary by military operations;

(e) It is a grave breach of international humanitarian law, and is a war crime, as set out in article 147 of the Fourth Geneva Convention of 1949, to extensively destroy and appropriate property when not justified by military necessity and carried out unlawfully and wantonly;

(f) The rule, reflected in articles 49 and 52 of Additional Protocol I, that military operations may only be directed against military objectives and that acts of violence, whether in offence or defence ("attacks"), shall be strictly directed at military objectives;

(g) It is a war crime to employ acts of violence not directed at specific military objectives, to employ a method or means of combat which cannot be directed at a specific military objective, or to employ a means or method of combat the effects of which cannot be limited as required by the law of armed conflict;

(h) The customary law rule that prohibits attacks which reasonably may be expected at the time to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, are prohibited; and

(i) The customary law rule that, in so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantege.

2. For States parties the following principles of international law, as applicable, provide additional protection for the environment in times of armed conflict:

(a) Article 55 of Additional Protocol I requires States parties to take care in warfare to protect the natural environment against widespread, long-term and severe damage;

(b) Articles 35(3) and 55 of Additional Protocol I also prohibit States parties from using methods or means of warfere which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population;

(c) Article 55(2) of Additional Protocol I prohibits States parties from attacking the natural environment by way of reprisals;

(d) Article 2(4) of Protocol III to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects prohibits States parties from making forests or other kinds of plant cover the object of attack by incendiary weapons except when such natural elements are used to cover, conceal or camouflage combatants or other military objectives, or are themselves military objectives; and

(e) The 1977 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD) prohibits States parties from engaging in military or any other hostile use of environmental modification techniques (i.e., any technique for changing - through the deliberate manipulation of natural processes - the dynamics, composition or structure of the earth, its biota, lithosphere, hydrosphere and atmosphere, or of outer space) having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State party.

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